IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No 505 of 2004

in

SPECIAL CIVIL APPLICATIONNo 10519 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PUNJYABHAI BHULABHAI VASAVA
Versus
DHARMESHKUMAR RAMBHAI GAMIT DEPUTY EXEUCTIVE ENGINEER

Appearance:
1. Misc.Civil Application No. 505 of 2004
MR BIPIN I MEHTA for Petitioner No. 1
MR SV PARMAR for Respondent No. 1
MS PREETI S PARMAR for Respondent No. 1
NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and

HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 12/07/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.K.TRIVEDI)

Rule. Mr. Parmar, learned advocate waives service of Rule on behalf of respondent. By consent, Rule is fixed forthwith.

2. Heard Mr. Mehta, learned advocate for the petitioner, who in turn has taken us through the application and the documents attached thereto including the order passed by the learned Single Judge in Special Civil Application No. 10519 of 2002 filed by the respondent i.e. Executive Engineer against the petitioner dated 29th July, 2004 and the correspondence between the petitioner and respondent authority, in which, the petitioner had informed the respondent authority for compliance of the order passed by the learned Single Judge for payment of salary as contemplated under Section 17 (B) of the Industrial Disputes Act. The petitioner has approached this court and prayed that the respondent be held responsible for committing contempt of this court and punish the respondent accordingly, under the provisions of the Contempt of Courts Act. This petition is supported with an affidavit of the petitioner dated 31st March, 2004. Considering the averments made in the application, the Division Bench had earlier, as per order dated 5.4.2004, issued notice, which was made returnable on 26.4.2004. As per order at Annexure - A to this petition dated 29th July, 2003, the Deputy Executive Engineer has filed petition against the petitioner challenging the award of the labour court and dealing with the said petition, while issuing Rule, the court has granted benefits to the workman Shri Vasava under Section 17 (B) of the Industrial Disputes Act and further observed that, such benefits be given as expeditiously as possible and in any case, within a period of one month from the date of the order. While filing this petition, it is the case of the petitioner that in spite of the order passed by the learned Single Judge, the respondent had deliberately flouted the order and thereby, committed contempt of this court and prayed that the respondent be held responsible for contempt of court and be punished accordingly under the provisions of the Contempt of Courts Act. It is the case of the petitioner that after the said order was passed by the learned Single Judge, the petitioner has informed the respondent as well as the Executive Engineer

(R&B), Surat under his letter dated 7.8.2003 and requested for granting benefits to him under the provisions of the Industrial Disputes Act as per order passed by the learned Single Judge and the petitioner has also annexed the said letter issued by him at Annexure B to this petition. In response to the said letter issued by the petitioner, the Deputy Executive Engineer had under his letter dated 22.8.2003 informed the petitioner to submit evidence by producing documents that during the intervening period, he has not worked any where and copy of the said letter was also endorsed to the Executive Engineer for information. After the said letter was received by the petitioner, the petitioner has under his letter dated 19th September, 2003 informed the said authority that he is unemployed and he has not got any service in any private institution nor with Government organization and he has also forwarded his affidavit. He has further informed the authority that original affidavit dated 4.9.2003 was already sent under Registered Post A.D. and he has also annexed the copy of the affidavit made on the stamp paper as well as the acknowledgment of the Registered Post AD. As per annexure - E to this petition, the Executive Engineer, has addressed a letter to the petitioner informing him that till date, no document has been forwarded and received by the authority and on forwarding said documents, the steps will be taken for making payment and asked the petitioner to furnish the documents indicating that he has not served any where. The Executive Engineer has endorsed the copy of his letter to the Deputy Executive Engineer, Uchhal.

3. An affidavit in reply is filed by Shri Dharmeshkumar Gamit dated 4th May, 2004 and in his affidavit, he has also annexed the xerox copy of the affidavit of Shri Vasava Punjyabhai dated 2.9.2003. In para 7 of the affidavit, Shri Gamit has tendered unconditional apology by filing detailed reply in respect of the contentions raised in this petition. As observed earlier that Shri Gamit has offered his unconditional apology. However, it is necessary for us to reproduce para 7, which he has made in his affidavit, which reads as under :-

"para 7 : In above circumstances, a decision could not be taken in the matter. I offer my unconditional apology. The Executive Engineer's office would immediately address a letter to the petitioner - Punjyabhai and inquired of him as to the income he derives from the agriculture pursuits. On getting information from him, he

will be paid the amounts specified in Section 17 (b) of the Indian Disputes Act reduced by the figure of information supplied by him within a period of two months from the date of receipt of information from the petitioner - Punjyabhai."

This shows that the stand taken by the respondent authority that in spite of the information furnished by the petitioner, the respondent authority still wants further information in the matter from the petitioner and on getting such information, the amount will be paid within a period of two months from the receipt of the information received from the petitioner.

4. The petitioner has already furnished the required information and further that, even at the time of issuance of rule by the learned Single Judge, the petitioner had already filed affidavit disclosing that he is not gainfully employed any where and accordingly, the learned Single Judge has directed the present respondent to give benefits to the present petitioner under Section 17 (B) of the Industrial Disputes Act by granting one month time. Even thereafter, the petitioner has already furnished the requisite information to the respondent authority.

5. Considering the stand in this contempt petition, till today, the respondent authority is of the view that the petitioner has not furnished the required information, we are of the view that the authority is not required to interpret the order of the Court. The order passed by the learned Single Judge is very clear, for which, no interpretation is required. The present petitioner has already filed an affidavit, in which, he has disclosed that he has not gainfully worked any where and accordingly, the respondent was required to comply with the directions of the learned Single Judge. In our view, the respondent authority was not satisfied by issuing letter to the petitioner for calling the information of producing documents to the effect that he is not gainfully employed any where.

6. During hearing, Mr. Parmar has also tendered xerox copy of certain documents and informed us that during the pendency of this application, a bill is prepared by the Executive Engineer, Panchayat, (R&B) Division, Surat for sum of Rs.17,782=00 and further that, Executive Engineer has also passed an order on 9th July, 2004 for releasing the amount in favour of the petitioner in compliance of the order passed by the learned Single Judge by making payment under Section 17 (B) of the

Industrial Disputes Act. The bill prepared by the authority is submitted to the Accounts Officer, District Panchayat Office, Surat. Mr. Gamit is also present before the Court. Mr. Parmar and Gamit also assure this court that bill prepared by the Executive Engineer is in accordance with law. However, if any objection is raised by the Accounts Officer, the same will be complied with and further assure this court that petitioner will be paid the said amount within a period of 10 days from today. Mr. Gamit has also tendered unconditional apology before us and requested us to drop this proceedings initiated under the Contempt of Courts Act. He further assures that amount under Section 17 (B) will be paid in accordance with law regularly to the petitioner. Considering the stand taken by the respondent, we accept the unconditional apology tendered by Shri Gamit. The respondent authority shall make payment to the petitioner within 10 days from today. If no payment is received within the time granted by this court, liberty is granted to the petitioner to revive this application, simply by filing a note. Rule is discharged with no costs.

(D.K. Trivedi, J.)

(K.M. Mehta, J.)
pallav